IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 33781 of 2006(V)

PETITIONER:

C.A.LATHA KUMARI, W/O.BALAKRISHNAN NAIR,
AGED 50, ADMINISTRATIVE OFFICER SCALE-I ORIENTAL INSURANCE CO. LTD., DIVISIONAL OFFICE,
THIRUVALLA.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:
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1. **THE CHAIRMAN CUM MANAGING DIRECTOR,**
   ORIENTAL INSURANCE CO. LTD.,
   ORIENTAL HOUSE P.B.NO.7037, A/25/27,
   ASAF ALI ROAD, NEW DELHI-110 002.

2. **THE CHIEF ASSISTANT GENERAL MANAGER**
   AND PROMOTING AUTHORITY,
   ORIENTAL INSURANCE COMPANY LTD.,
   ORIENTAL HOUSE, P.B.NO.7037, A/25/27,
   ASAF ALI ROAD, NEW DELHI-110 002.

3. **THE CHEIF REGIONAL MANAGER,**
   ORIENTAL INSURANCE COMPANY,
   METRO PALACE, OPPOSITE NORTH RAILWAY STATION,
   ERNAKULAM.

4. **SUNNY JOSEPH,**
   ASSISTANT MANAGER,
   ORIENTAL INSURANCE COMPANY,
   DIVISIONAL OFFICE-2, KANJIKUZHY,
   KOTTAYAM.

5. SHEELA DEVI,
ASSISTANT MANAGER,
ORIENTAL INSURANCE COMPANY,
BRANCH OFFICE, ALLEPPEY.

6. R.ASHOK KUMAR,
ASSISTANT MANAGER,
ORIENTAL INSURANCE COMPANY,
DIVISIONAL OFFICE-2, KOLLAM.

BY ADV. SRI.N.NANDAKUMARA MENON - R3
SRI.P.K.MANOJKUMAR
SRI.K.J.SAJI ISSAC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON 23/10/2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.33781/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS DT. 11.5.2000.

EXT.P2:- COPY OF THE NOTICE DT. 11.5.2000 ISSUED BY 1ST RESPONDENT .

EXT.P3:- COPY OF THE RELEVANT PORTION OF THE SENIORITY LIST OF ADMINISTRATIVE OFFICER DT. 1.4.06.

EXT.P4:- COPY OF THE ISSUED BY INSURANCE INSTITUTE OF INDIA DT. 7.11.03.

EXT.P5:- COPY OF THE LIST OF ASST. MANAGERS PUBLISHED BY 1ST RESPONDENT.

EXT.P6:- COPY OF THE REVIEW PETITION DT. 16.10.06 TO THE 1AST RESPONDENT BY THE PETITIONER.

EXT.P6(A):- COPY OF THE LETTER DT. 12.1.07 ISSUED BY THE CHIEF MANAGER , ORIENTAL INSURANCE COMPANY.

EXT.P7:- COPY OF THE BALANCE LIST OF ASST. MANAGERS PUBLISHED BY IST RESPONDENT.

EXT.P8:- COPY OF THE REPRESENTATION DT. 21.11.06 TO THE 1ST RESPONDENT BY THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

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V. GIRI ,J.

WP(C).NO. 33781 of 2006

Dated this the 23rd day of October, 2007

JUDGMENT

The issue raised in this writ petition relates to the action taken by respondents 1 to 3 in not promoting the petitioner to the post of Assistant Manager in the Oriental Insurance Company. Promotions were effected to the post of Assistant Managers in the course of the promotion exercise for the year 2006. Apparently, the petitioner was also considered. There was no ineligibility as such attached to the petitioner. But nevertheless she was not promoted in spite of an application for review filed by her before the superior authorities in terms of the promotion policy prevailing in the company. It is aggrieved thereby that the petitioner has filed this writ petition for a direction to the respondents to promote her to the post of Assistant Manager from the date on which her immediate juniors were promoted, namely, from the date of Ext.P5.

2. Petitioner originally joined the service of the

first respondent in 1983 and was promoted as a Senior Assistant in 1989. The next higher post that of an Assistant Administrative Officer is a selection post. Originally, in the course of the promotion exercise undertaken for promotion to the post of Assistant Administrative Officer in the year 2000, the petitioner was denied promotion. She thereafter sought a review in relation to her non-promotion and the review committee found her eligible for promotion as per the promotion policy. Thus, by Ext.P1 order dated 11.5.2000, petitioner was promoted as an Assistant Administrative Officer from the cadre of Senior Assistant, to take effect from the date she assumes charge as an Assistant Administrative Officer. In circumstances where the petitioner was found eligible by the review committee, Ext.P1 order states as follows:

> **"Your seniority in the promoted cadre of AAO(A) will be reckoned from the date of publication of Ranking List of the Main Exercise i.e.3rd/6th March, 2000."**

3. Since Ext.P1 order is dated 11.5.2000, petitioner took charge only after receipt of the same,

i.e. on 29.5.2000.

4. In 2006, the company undertook a promotion exercise to the post of Assistant Manager. It seems that the petitioner is qualified and she was considered for promotion. But she was not included in Ext.P5 list of promotees. She then sought for a review of her non-promotion in terms of paragraph 14(1) of the promotion policy, as per Ext.P6. The same was rejected under Ext.P6(a) stating that the petitioner's representation was placed before the review committee and the committee could not find any valid reason/additional points to change its earlier decision. A further review was sought for. That was not granted. It is therefore that the petitioner approached this Court for a direction to promote her to the post of Assistant Manager with effect from the date of Ext.P5.

5. In the counter affidavit filed by the company, reference is made to the promotion policy which prevails in the company. In the assessment for promotion, weightage in terms of numerical marks for various criteria are worked out in the manner indicated

below. Thus in the case of promotion from the cadre of Administrative Officer to Assistant Manager, marks are awarded under the following heads:

a) Seniority	**60**
b) Insurance Qualification	**10**
c) CR Form	
d) Traits in CR	**10**
e) Performance	**12.5**
f) Growth Potential	**7.5**
g) Interview	**--**
Total	**100**

6. Seniority accounts for 60 marks and insurance qualification accounts for another 10 marks. It is further stated in the counter affidavit that promotion exercise to the cadre of Assistant Manager is conducted by Lower Management Service Committee consisting of (i) Chairman cum Managing Director to Company, (ii) Two General Managers of the company of whom one should be in charge of a personnel. (iii) representative of the SC/ST community nominated by the Chairman of the company.

7. Respondents have a specific case in

paragraph-13 of the counter affidavit that the petitioner was not selected for promotion to the post of Assistant Manager since she did not secure the minimum requisite marks for promotion under specified parameters subject to the limitation of vacancies in Assistant Managers' cadre (Scale II). The other candidates who were promoted had secured more marks than the petitioner. The petitioner has secured only 70.01 marks while the cut off marks for the current round of promotion in the cadre was 72.32. Accordingly, the ranking of the petitioner was 156 whereas the last selected candidate is ranked as 117. It is further stated that respondents 4, 5 and 6, who were juniors to the petitioner in the cadre of Administrative Officer, were entitled for seniority weightage for 5 years, in as much as that they were selected for promotion to the post of an Administrative Officer on 6.3.2000, and had joined duty in the promoted cadre on 27.3.2000. In as much as that the petitioner took charge in the cadre of Administrative Officer only on 29.5.2000, she became entitled for seniority weightage for 4 years.

8. In an additional statement filed by the third respondent, as directed by this Court the break up of the marks awarded to the petitioner as per the criteria for promotion and weightage under the Officers promotion policy 1990 is given. As noted above, the maximum marks that could be awarded under the head `seniority' for promotion to the post of Assistant Manager/Administrative officer is 60. But this is made up of 7.5 marks for each completed year subject to a maximum of 60. Giving the break up of marks got by the petitioner, it is noted as follows:

1. **Seniority**:- **30.36 (4 years of completed service + weightage for inter-se seniority in terms of Administrative Guidelines to the then Promotion Policy for Officers)**
2. **Insurance qualification**:- **10 marks for fellowship.**
3. **Performance Appraisal**:- **29.64**
4. **Total=30.36+10.00+29.64+70.01 (As Rounded off to second decimal point).**

Thus, in so far as the petitioner is concerned, the marks

awarded under the head ` seniority' was 30.36 made up of 7.5 marks for each completed year of service reckoned from 29.5.2000. In other words, the petitioner's seniority in the cadre of Administrative Officer was computed only with effect from 29.5.2000 and it is therefore that the number of years of completed service, in so far as the petitioner is concerned, was taken as four years, whereas in the case of respondents 4 to 6, who were juniors to the petitioner in the cadre of Administrative Officer, the number of years of completed service was taken as `5'. Thus, it is therefore that the petitioner was granted marks `30' - relatable to 4 years of service reckoned with effect from 29.5.2000 (plus .36 for weightage for inter-se seniority); whereas in the case of respondents 4 to 6, they were apparently granted marks at the rate of 7.5 marks per year for each completed year of service for 5 years. It is also evident from the additional statement filed by the third respondent that the petitioner was awarded maximum marks for insurance qualification and for performance appraisal from the

confidential report. The seniority of the petitioner in the cadre of Administrative Officer was computed with effect from 29.5.2000 whereas in the case of her juniors, it was computed with reference to the date on which such persons took charge, namely, 27.3.2000. Thus in the case of respondents 4 to 6 when they completed service on 31.3.2000, it was taken as one completed year, whereas in the case of the petitioner, she was taken as having completed one year only on 31.3.2001.

8. The dispute ultimately boils down whether the petitioner's seniority in the cadre of Administrative Officer should be reckoned with reference to the date, 29.5.2000, the date on which she took charge pursuant to Ext.P1 order dated 11.5.2000 or it must be given effect to from the date on which the company had issued a list of persons found eligible for promotion to the post of Administrative Officer in the main promotion exercise.

9. I heard the learned counsel for the petitioner Mr.S.Sreekumar, Sri.Nandakumaramenon learned

counsel for respondents 1 to 3 and Mr.Saji Issac learned counsel for respondents 4 to 6.

10. In my view, Ext.P1 order, by which the petitioner was promoted as an Administrative officer, gives an answer to the question. As is evident from the portion of Ext.P1, which was extracted above, it is made clear therein that the petitioner's seniority in the promoted cadre of Administrative Officer will be reckoned from the date of publication of the rank list of the main exercise, i.e. from 3rd/6th March 2000. This seems to be in consonance with the fact that the petitioner was found eligible for promotion to the cadre of Administrative Officer in the review exercise. It therefore seems to be a case where the competent authority which had undertaken the promotion exercise was convinced that the petitioner ought not to have been denied promotion, in the main exercise which was undertaken in March 1999 and the list published in March 2000. Ext.P1 seems to suggest that the petitioner was therefore found eligible for promotion to the cadre of Assistant Administrative Officer as against

the vacancies, which were sought to be filled up in the exercise that was undertaken in the year 1999. In other words, when the reviewing authority found that the petitioner is eligible, it must be treated as a case of the petitioner being found eligible for being promoted, even as per the main exercise. In my view, this seems to be the purport of the statement in Ext.P1 to the effect that the petitioner's seniority in the promoted cadre will be reckoned from the date of publication of the rank list of the main exercise, namely, 3rd/6th March 2000.

11. It is submitted on both sides that the juniors to the petitioner who were found eligible in the main exercise of promotion, namely, respondents 4 to 6 and other persons had actually taken charge on 27.3.2000. Delay on the part of the petitioner in taking charge was only on account of the fact that orders of the reviewing authority, which found the petitioner eligible, was issued only on 11.5.2000. It therefore follows that had the petitioner been included in the main list, along with her juniors, she would naturally have completed one year of service on 31.3.2000. If this be so, then going by the

break up of marks scored by the petitioner as given by the respondents, petitioner would be entitled to 37.5 marks instead of 30.36 marks, under the head of `seniority'. Consequently she would have secured more than the minimum required marks (namely72.32) for being considered eligible for promotion to the post of Assistant Manager.

12. Mr.Nandakumara Menon contended that even if the promotion of the petitioner is given effect to from 3rd/6th of March 2000 in consonance with Ext.P2, the length of her service must necessarily be computed only with reference to the date on which she took charge namely 29.5.2000 and this seems to be the effect of paragraph-11 of the promotion policy as noted in the additional statement. He further contends that the petitioner has no challenge to the promotion policy. Though the petitioner is placed in an unfortunate position for no fault of hers, it seems to be the consequence of the promotion policy which is binding on the company and employees. I am unable to accept this submission. No doubt, paragraph-11 says that

promotion will take effect only when the officer takes charge in the promoted cadre and the seniority will be reckoned from the date of selection but the date of taking charge, obviously, must not be prolonged to an extent where it goes beyond the cut off date. In the instant case, obviously, it was not the fault of the petitioner that she could take charge only on 29.5.2000, as I have noted above. The effect of Ext.P1 order is to deem that the petitioner was found eligible for promotion to the post of Assistant Administrative Officer and therefore it deemed the petitioner eligible to be included in the main list of promotees which was issued during the period from 3rd/6th March 2000. This is the most fair manner of giving effect to the promotion of the petitioner to the said post consequent upon the reviewing authority finding that she is eligible to be promoted. In my opinion, it would otherwise be unfair and unreasonable and in that sense it would be violative of 14 and 16 of the Constitution. After all, when the competent authority finds that the petitioner is eligible for promotion and consequently she is to be

treated as eligible to be included in the main list of promotees, the date of taking charge, which the petitioner obviously was not responsible for, should not operate in such a manner as to affect her seniority in the promoted cadre.

For all these reasons, the writ petition is allowed. The petitioner is found eligible for being promoted to the post of Assistant Manager in the promotion exercise undertaken by the company in the year 2006. Respondents 1 to 3 are directed to pass orders promoting the petitioner to the post of Assistant Manager with effect from the date on which her immediate juniors in the cadre of Administrative Officer were promoted. The petitioner will be entitled to all consequential benefits arising therefrom. Orders in this regard shall be passed within a period of one month from the date of receipt of a copy of this judgment.

V. GIRI, JUDGE

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